

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Ake SJOBERG

Confirmation: 1992

Serial No.: 10/580,255

Group Art Unit: 1791

Filed: June 7, 2006

Examiner: MUSSER, BARBARA J

For: **PROCESS FOR THE MANUFACTURING OF A DECORATIVE
SURFACE ELEMENTS WITH A SURFACE STRUCTURE**

REQUEST FOR RECONSIDERATION AFTER FINAL REJECTION

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Reconsideration of the rejections as set forth in the Office Action of September 14, 2011, are respectfully requested in view of the following comments.

In any rejection under 35 U.S.C. 103(a) for unpatentability, it is the Examiner's initial burden to establish the elements of the claimed invention. Thus, even before the Examiner can reach the conclusion of obviousness, he or she must locate the claimed elements in the prior art and may not substitute speculation, hindsight or unfounded assumptions merely because the Examiner has doubts that the invention is patentable. As the Court of Customs and Patent Appeals stated in *In re Warner*, 379, F.2d 1011, 1017 (1967):

"In making such a [section 103] rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis".